

WILLIAM STEWART,

Plaintiff,

v.

CITY OF PHILADELPHIA, POLICE OFFICER
DANIELLE HUGHES, POLICE OFFICER
DAMIAN WALTO, and POLICE OFFICER
JUSTIN RIOS,

Defendants.

[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing

party. But, costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The Clerk may tax costs on 14 days notice. On motion served within the next 7 days, the court may review the clerk's actions.

Fed. R. Civ. P. 54(d)(1). The clerk's taxation of costs is subject to *de novo* review by the district court. See Reger v. The Nemours Found., Inc., 599 F.3d 285, 288 (3d Cir. 2010). Rule 54(d) creates a strong presumption that costs are to be awarded to the prevailing party. Id. (citing In re Paoli R.R. Yard PCB Litig., 221 F.3d 449, 462 (3d Cir. 2000)). The losing party has the burden of making the showing that an award is inequitable under the circumstances. Id. (citing In re Paoli, 221 F.3d at 462-63).

II. DISCUSSION

Plaintiff asserts three errors in the Clerk's Taxation of Costs. Defendants have failed to respond to Plaintiff's Appeal. Plaintiff's first argument is that the judgment of the Taxation of Costs should be reversed or substantially reduced due to Plaintiff's indigence. (Pl.'s Mem. Law Support App. of Clerk's Tax of Costs at 1-2.) When viewing a clerk's award of costs, a district court may consider "each of the losing parties' potential indigency or inability to pay the full measure of a costs award levied against them." In re Paoli, 221 F.3d at 468. Plaintiff's adjusted gross income in 2006, 2007, 2009 and 2011 was \$3,742.00, \$10,638.00, \$9,292.00, and \$9,510.00, respectively. (Pl.'s Mem. Law Support App. of Clerk's Tax of Costs at 2; Ex. A.) Plaintiff was incarcerated throughout 2010. (Id.; Ex. B.) He also claims his minor granddaughter as his dependent. (Id.) While we decline to reverse the Clerk's award of costs based on Plaintiff's potential indigency, Plaintiff's ability to pay costs has been a factor taken into serious consideration regarding our decision to reduce Plaintiff's costs.

Second, Plaintiff asserts that the award of \$440.00 in subpoena service fees for the alleged research time for subpoena service and purported travel expenses are exorbitant and improper. (Id. at 3-4.) Although Plaintiff argues against the fees for research, the Clerk of Court did not include these fees within his award of costs finding that “investigative service fees are not taxable under 28 U.S.C. § 1920.” (Clerk’s Tax. of Costs at 10.) Originally, Defendants requested a total of \$651.00 for subpoena services. The Clerk, however, subtracted the investigative fee of \$207.00 from the total amount of \$651.00 concluding that Defendants were owed a total of \$444.00 in subpoena fees solely for travel time and mileage. (Id.)

Since the investigative service fees are not at issue, we will address Plaintiff’s argument that the travel expenses were exorbitant. Plaintiff asserts that the travel time of five hours and purported mileage of 198 miles are outrageous. (Pl.’s Mem. Law Support App. of Clerk’s Tax of Costs at 3.) Plaintiff has attached documents showing that such travel time and mileage are indeed outrageous given the distances of a total of approximately 20 miles and an approximate travel time of 52 minutes to go to and leave from the two Philadelphia addresses of the witness being subpoenaed. (Id.; Exs. C, D, E.) Given our broad discretion in awarding costs, we find that these costs should not be borne by Plaintiff. Defendants have not proffered any argument or proof against Plaintiff’s argument or exhibits showing that the charged time and mileage are inflated. In light of this, as well as Plaintiff’s potential indigent status, we find that the costs are excessive and reduce the amount of the service costs awarded to Defendants to zero.

Lastly, without providing any legal precedent, Plaintiff contends that the Court should not tax costs on behalf of the Defendant Police Officers for bills that were not incurred or paid by them, but were incurred by Defendant, City of Philadelphia. (Pl.’s Mem. Law Support App. of

Clerk's Tax of Costs at 7.) The Civil Rights Unit of the City of Philadelphia Law Department has represented Defendants throughout this litigation. It is proper that the City of Philadelphia be reimbursed for its costs.

III. CONCLUSION

Having reviewed the Taxation of Costs made by the Clerk of Court, the Court reduces the award from a total of \$1,171.77 to a total of \$727.77 for deposition costs. Given Plaintiff's monetary status, the Court notes that it may be beneficial for all of the parties to set up a payment plan for Plaintiff.

An appropriate Order follows.